

INTRODUCTION

The Family Law Team at Munro & Noble is housed within the Court Department and was established by our Senior Partner David Eason in 1984. Since then the team has gone from strength to strength and are now able to provide a wide range of advice and assistance within the field of Family Law.

PRENUPTIAL AGREEMENTS

A prenuptial or ante-nuptial agreement is a document agreed by a couple prior to their marriage which will help regulate matters in the worst case scenario of divorce.



“Prenuptial agreements are becoming more and more common in Scotland. For those who wish to either:

1. Ring-fence certain assets to exclude them from being available for division; or
2. Make specific provision for the division of assets in the unfortunate event of separation or divorce.”

Q. Why would you consider entering into such an agreement?

A. The main advantage of entering into an agreement such as this is that it affords you peace of mind. It also makes it clear at the outset what would happen if things do not work out between you. If you have considerable assets it is sensible to at least consider and ask for advice about a prenuptial agreement.

Q. What could I put into a prenuptial agreement?

A. The content depends upon your wishes and usually includes details on any aliment to be paid during or after the breakdown of the marriage, together with provisions for the subdivision of property. Furthermore, it is becoming common for people to attempt to ring-fence certain property, or protect business assets, or assets which have been passed from generation to generation, thereby excluding them from the definition of matrimonial property, or to make a specific provision for what one party should receive, or identify a particular asset and provide for its transfer to one person. It is understandable that people desire certain assets to be protected, for their children of any previous marriage.

Q. Are prenuptial agreements legally enforceable?

A. There is some conflicting law regarding prenuptial agreements. However, they are generally thought to be enforceable within Scotland, if they are carefully and accurately

drafted. There are a number of high profile English cases which suggest that prenuptial agreements are unenforceable and contrary to public policy.

The Scottish Courts have always been reluctant to interfere with an Agreement entered into between two adults of sound mind and it should be anticipated that whatever is contracted for will be binding and enforceable.

Section 16(1) of the Family Law (Scotland) Act 1985 states:-

“Where the parties to a marriage have entered into an Agreement as to financial provision to be made on divorce, the Court may make an order setting aside or varying:

- a. Any terms of the Agreement relating to a periodical allowance where the Agreement expressly provides for the subsequent setting aside or variation by the Court of that term; or
- b. The Agreement or any term of it where the Agreement was not fair and reasonable at the time it was entered into.”

Although it might be thought that Section 16(a) was intended to apply only to Minutes of Agreement made post-separation, if one reads the wording carefully, this is not the case because a Prenuptial Agreement is an Agreement

entered into to determine financial provision to be made on divorce; it just happens to be made before the marriage.

The fact that there is a statutory provision to set aside a Prenuptial Agreement, albeit only within the very narrow parameters that it has to be unfair or unreasonable at the time it was executed, tends to reinforce the view that Scottish Courts will uphold a Prenuptial Agreement providing firstly that there was no coercion or undue influence to sign the Agreement and secondly that there must have been full disclosure of all assets before execution.

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Prenuptial Agreements at Munro & Noble

Munro & Noble are an established local firm dedicated to providing an excellent service as we assist clients through the difficulties associated with the breakdown of a relationship.

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